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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

December 13, 2000

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

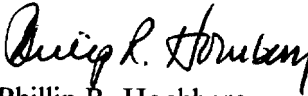
Re: Petition for Reconsideration of Office of the Commissioner of Baseball, National Basketball Association, National Football League, National Hockey League and Division I-A Athletic Director's Association in CS Docket No. 00-2

Dear Ms. Salas:

Enclosed for filing please find an original and eleven (11) copies of the Petition for Reconsideration of Office of Commissioner of Baseball, National Basketball Association, National Football League, National Hockey League, and Division I-A Athletic Director's Association in the above-referenced docket.

Please stamp and return to this office with the courier the enclosed extra copy of this filing designated for that purpose. Please direct any questions that you may have to the undersigned.

Respectfully submitted,


Phillip R. Hochberg

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In re Matter of:

Implementation of the Satellite Home
Viewer Improvement Act of 1999

Sports Blackout Issues

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CS Docket No. 00-2

PETITION FOR RECONSIDERATION

OF

OFFICE OF THE COMMISSIONER OF BASEBALL

NATIONAL BASKETBALL ASSOCIATION

NATIONAL FOOTBALL LEAGUE

NATIONAL HOCKEY LEAGUE

AND

DIVISION 1-A ATHLETIC DIRECTOR'S ASSOCIATION

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December 13, 2000

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Matter of:)	
)	
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PETITION FOR RECONSIDERATION

OF

OFFICE OF THE COMMISSIONER OF BASEBALL

NATIONAL BASKETBALL ASSOCIATION

NATIONAL FOOTBALL LEAGUE

NATIONAL HOCKEY LEAGUE

AND

DIVISION 1-A ATHLETIC DIRECTOR'S ASSOCIATION

The Office of the Commissioner of Baseball ("Baseball"), National Basketball Association ("NBA"), National Football League ("NFL"), National Hockey League ("NHL"), and Division 1-A Athletic Director's Association ("Athletic Directors") (jointly "the Leagues") hereby file this Petition for Reconsideration, before the Federal Communications Commission, pursuant to Section 1.429(a) of the Commission's Rules, in response to the Report and Order in CS Docket No. 00-2, released November 2, 2000.¹

¹ FCC 00-388, __ FCC Rcd __, 65 Fed. Reg. 68082 (Nov. 14, 2000).

Although the Leagues disagree with the Commission's conclusions on a number of critical issues (e.g., protection against importation of stations other than network affiliates and nationally distributed superstations, network non-duplication of stations other than nationally distributed superstations, and adoption of the "unitary package" concept) the Leagues submit that there are two substantive issues – notice of sports blackouts to satellite carriers and blackout protection for border teams – which the Commission should reconsider. Finally, the Leagues believe the regulatory language of Section 76.128 (taken in conjunction with Section 76.111) fails to achieve the Commission's stated goal of maintaining the current blackout rule.

(a) Notice to Satellite Carriers

In the Notice of Proposed Rulemaking,² the Commission asked if the period for notification to satellite carriers should be the same as for cable. Under the cable blackout rules, for regularly scheduled events during the regular season, the only requirement is that any game deletion notice be received by Monday of the week preceding the calendar week of the game. This timetable allows the Leagues to compile national and local telecasting schedules and distribute all notices at one time; it also allows cable operators (even those with systems in dozens of major markets) to receive all notices at one time.

Nevertheless, some of the satellite carriers argued that the cable rules should not be applied, urging, among other things, that notices be filed 60 days before the beginning of the season and 30 days before "events not regularly scheduled" (such as playoffs).³ They made this

² FCC 00-4, 65 Fed. Reg. 4927, 4930 (Feb. 2, 2000).

³ See DirecTV Comments at 16-17 and Reply Comments at 10-11 and EchoStar Comments at 10 and Reply Comments at 10.

suggestion despite the fact that telecasts for the regular season often are not scheduled that far in advance and, in the case of playoff games, that the games themselves are not scheduled that far in advance. In its Report and Order, the Commission decided to impose the cable notification rules on satellite, but stated

we will also require that rights holders notify satellite carriers within forty-eight hours of the time the telecast is scheduled.⁴

Such a requirement, however, would create a significant and unwarranted burden on the Leagues and would also cause confusion on the part of the satellite carriers. For example, Baseball, the NBA, the NHL, and the Athletic Directors will frequently have game telecasts scheduled first by the visiting team. The rule would require that within 48 hours of that visiting team decision to televise, notices be sent by the home team or the league to all the satellite carriers because this decision by the visiting team to televise would trigger Section 76.127. But this information frequently is not even communicated to the home team or to the league for days or weeks. The home team or the league therefore would be obligated to distribute notices within 48 hours of a decision of which they might not even be aware.

Moreover, if the home team subsequently scheduled a telecast of the same game as the visiting team, the need to blackout would be removed under Section 76.127(a). Within 48 hours of that decision, another set of notices, amending the first notice, would have to be distributed. Rather than sending out all notices at one time – the practice followed for a quarter-century under the cable regulations – blackout requests would have to be distributed every time some telecasting decision is made in advance of the season. And rather than receiving all notices at one

⁴ Text at Para. 69, 65 Fed. Reg. at 68096. Indeed while the text refers to 48 hours of the time the telecast is “scheduled,” new Section 76.127(c) talks in terms of 48 hours after the time of the telecast to be deleted is “known,” a potentially significant difference.

time, blackout requests would come dribbling in to the carriers over a period of weeks or months. It is difficult to imagine a more inefficient regime.⁵

For the National Football League and the satellite carriers, the situation would be equally difficult. All NFL regular season games are broadcast by ABC, CBS, and Fox and are televised in the market of the visiting team. Under the NFL's "blackout" rule, which is incorporated in each of its network television contracts, home games are televised locally if, and only if, they are sold-out 72 hours in advance of game time. Under Section 76.127(c), blackout notices therefore would need to be sent immediately by the NFL upon the April release of its schedule when it is not known if in fact games will be sold out and televised locally.⁶ Thereafter, as each team sells out on a season-long basis or sells out an individual game, the April notice to the carriers would have to be amended. Contrast this situation with cable's notice requirement, where notices would not even have to be sent at all if the team is sold out before the beginning of the season and lifts all blackouts.

The Commission's apparent effort to "give" something to the satellite carriers in terms of the "48 hour rule" therefore would create more problems for the carriers themselves than simply adopting the cable model, to say nothing of creating considerable additional unnecessary work for the Leagues.

⁵ In fact, under a literal reading of the new rules, if the Atlanta Hawks were to release a schedule of 15 away game telecasts on August 15, blackout notices to every carrier for each of the 15 games would have to be provided by August 17; if on August 23, the Boston Celtics were to release a schedule of 18 away game telecasts, another set of notices would have to be sent to every carrier for each of the 18 Celtic away game telecasts by August 25; and so forth until every team in the league is accounted for. These would then be subject to being revised -- with additional notices -- depending on home games being televised by the home team.

⁶ Is the telecast "known" or "scheduled" before the public release of the NFL schedule of games?

Accordingly, the Leagues urge the Commission to adopt the very same standard of notice for satellite carriers as it has had for cable operators since 1975: for regularly scheduled games, the Monday of the calendar week preceding the blackout week; for events not regularly scheduled and revisions of notices previously submitted, 24 hours after the time of the telecast is known, but in any event no later than 24 hours from the time the subject telecast is to take place.⁷

(b) Protection for Border Teams

In addition, the Commission failed to resolve an issue that currently affects two of the Leagues – the NBA and the NHL: the ability of border franchises to obtain blackouts on nationally distributed superstations and network affiliates.

This issue was specifically raised by the National Hockey League in its Comments, when it said:

[D]o Canadian sports teams have the right to assert the program exclusivity provisions – including sports blackouts – against U.S. subscribers?⁸

The Commission failed to address this issue, stating only that foreign stations are “unable to invoke the protection of the ... sports blackout rules.”⁹ But, of course, under Section 76.127, it is not a station that is attempting to assert the protection; rather, it is a member team of one of the Leagues. There is no question of jurisdiction as there might be with a foreign station or a foreign carrier.

Here, however, there is a team which is an integral part of a League (made up largely of U.S. teams). Absent the team’s ability to obtain protection against importation of a distant

⁷ Former §76.67(c), now §76.111(c).

⁸ National Hockey League Comments at 8.

⁹ Text at Para. 15, 65 Fed. Reg. at 68085.

telecast of its home game, the home team may choose to deny the visitors the opportunity to telecast. Such a decision would protect the home gate, but would prevent the away team's fans in its home city – or anywhere else where the signal of the visiting team is viewed on cable or by satellite – from seeing the game.

The Commission, therefore, should clarify that Section 76.127¹⁰ applies to any subscriber in the United States.

(c) Specific Language of Section 76.128

The sports blackout rule first adopted in the 1970s provided that if a home game was not televised on must-carry “local” signals, it could not be imported on a non-must-carry signal. Local signals were generally defined in former Section 76.5(gg) as stations within whose specified zone the cable community unit was located.

The Commission clearly intended to maintain this definition in its new rules.¹¹ The Commission stated in its Satellite Report and Order that it was “not [its] intention to change the operation of the cable sports blackout rule.”¹² The Commission’s intention, however, did not meet its result.

Unfortunately, in its effort to simplify its rules and recognize that the must-carry rules have changed, the actual language of the regulation adopted by the Commission inadvertently

¹⁰ As well as new Section 76.111

¹¹ As the Commission stated in its Report and Order:
The National Hockey League ... maintains that any replacement for [now-deleted] Section 76.5(gg) should incorporate the 1972 must carry rules definition of a “local” station’s market area. We agree.
(Emphasis added.) Text at Para. 85, 65 Fed. Reg. at 68098.

¹² Text at Para. 86, 65 Fed. Reg. at 68098.

revised the blackout standard in dealing with cable and satellite systems. Section 76.128 now defines a “local” station as, among other things, a station either within 35 miles of the cable or sports event community or one placing a Grade B contour over the cable or sports event community. Under the rules which the Commission “agreed” to follow in the Report and Order,¹³ Grade B contour stations had no must-carry rights¹⁴ and were subject to deletion under Section 76.67.

The Commission’s new interpretation restricts the scope of the sports rule protection. For example, the community of Racine, WI is within the Specified Zone of Milwaukee, but is also covered by the Predicted Grade B contour of WGN-TV, Chicago.¹⁵ Under the new rule, a question could be raised about a Racine cable system blacking out a non-televised home game of the Milwaukee Bucks or the Milwaukee Brewers against the Chicago Bulls or Chicago Cubs carried on WGN-TV. Throughout all of sports, other examples of communities within specified zones of home cities being overlapped by Grade B signals also exist.¹⁶

In light of its stated intent of continuing the interpretations of the past 25 years, the Commission must address this inconsistency in its drafting. The Commission must re-establish the protections for cable blackouts that have existed for a quarter-century and create the same type of protection for satellite importation. This can be accomplished by specifically recognizing that coverage by a Grade B contour does not vitiate blackout protection.

¹³ See Footnote 11.

¹⁴ See, e.g., former Section 76.61

¹⁵ See Section 76.128(ii).

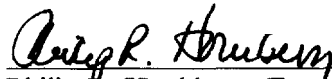
¹⁶ For example, a similar situation exists with the Philadelphia Phillies flagship station, WPSG-TV, or WTXN-TV, Hartford, a regional network affiliate of the Boston Red Sox, which place a Grade B contour over communities within 35 miles of New York City.

CONCLUSION

For the reasons stated above and in their earlier Comments and Reply Comments, the Leagues urge adoption of regulations consistent with the positions taken.

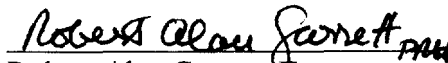
Respectfully Submitted,

NATIONAL BASKETBALL ASSOCIATION
NATIONAL FOOTBALL LEAGUE
NATIONAL HOCKEY LEAGUE
DIVISION 1-A ATHLETIC DIRECTOR'S ASSN.



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